

<sup>2</sup> The Board notes that the AB-1 Form references an April 19, 2021 decision, which granted appellant’s “petition to withdraw” his request for a hearing before a representative of OWCP’s Branch of Hearings and Review.

post-traumatic stress disorder. It paid appellant wage-loss compensation on the supplemental rolls commencing June 24, 2007 and on the periodic rolls commencing May 9, 2010.

A notification of personnel action, Standard Form (SF) 50-B, dated June 30, 2007 noted appellant's retirement plan as Code C, a code applicable to those under the Civil Service Retirement System and Federal Insurance Contributions Act (CSRS/FICA) CSRS Offset.

An earnings and leave statement for the period ending September 15, 2007 noted deductions for full retirement under CSRS.

In claims for compensation (Form CA-7) dated August 27 and September 3, 2009, appellant indicated that he was covered under the CSRS.

In a form dated October 24, 2020, the Social Security Administration (SSA) advised OWCP that appellant had concurrently received Federal Employees' Compensation Act<sup>3</sup> (FECA) benefits and retirement benefits through the Federal Employees Retirement System (FERS) beginning July 2011.

In a FERS offset overpayment calculation sheet dated December 11, 2020, OWCP calculated appellant's total overpayment amount from August 1 through September 30, 2007, December 1 through 31, 2010, and July 1, 2011 through December 5, 2020 as \$77,735.14.

On December 14, 2020 OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation, in the amount of \$77,735.14, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period August 1, 2007 through December 5, 2020. It provided an overpayment calculation. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and provided him with an overpayment action request form containing appeal rights. It afforded him 30 days to respond.

In an overpayment action request form dated December 28, 2020, appellant noted his disagreement with the preliminary overpayment determination. He asserted that his retirement plan was under CSRS not FERS.

On January 25, 2021 appellant submitted a July 19, 2007 letter from the Office of Personnel Management (OPM) confirming that his retirement plan was CSRS.

In a letter dated March 2, 2021, appellant disputed the overpayment asserting that he was covered under CSRS/FICA not FERS.

In a letter dated March 9, 2021, OPM advised OWCP that appellant was covered under CSRS from May 5, 1969 through September 1, 1981 and under CSRS Offset from June 20, 1999 through August 7, 2007.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

By decision dated March 25, 2021, OWCP finalized the December 14, 2020 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$77,735.14 for the period August 1, 2007 through December 5, 2020 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the repayment by withholding \$1,818.76 from appellant's continuing compensation payments every 28 days.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of whether appellant's SSA age-related retirement benefits were attributable to federal employment.<sup>4</sup>

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/FECA offset amount. Since the SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.<sup>5</sup> The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.<sup>6</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup> In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of SSA age-related retirement benefits, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.<sup>8</sup> This calculation worksheet is sent to SSA and the completed form is returned to OWCP setting forth purported SSA calculations as to the effective date and rate of SSA benefits without FERS and the effective date and rate of SSA benefits with FERS.<sup>9</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>10</sup>

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<sup>4</sup> See *Order Reversing Case, D.S.*, Docket No. 21-0305 (issued November 12, 2021); *Order Reversing Case, C.T., J.T.*, Docket No. 21-0153 (issued July 21, 2021); *Order Reversing Case, W.G.*, Docket No. 20-1389 (issued June 30, 2021); *Order Reversing Case, R.L.*, Docket No. 20-1333 (issued May 13, 2021); *J.L.*, Docket No. 19-1806 (issued July 29, 2020); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h), (September 2018).

<sup>6</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>7</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *J.L.*, *supra* note 4.

The Board has observed, however, that not all federal employees are enrolled in FERS.<sup>11</sup> Some FECA claimants are enrolled in another retirement program, such as the CSRS. Other federal employees are not entitled to be enrolled in a federal retirement program. Therefore, OWCP's procedures with regard to requesting offset information are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits. As such, the information solicited on the FERS Offset Calculation Worksheet that OWCP sends to SSA is not applicable to non FERS claimants and does not establish either the fact or amount of an overpayment.

Herein, the evidence of record does not establish that appellant was covered under FERS. Rather, multiple documents of record establish that he was covered either under CSRS or CSRS/FICA (CSRS Offset) during his federal service. The Board therefore finds that the March 25, 2021 decision must be reversed.<sup>12</sup>

**IT IS HEREBY ORDERED THAT** the March 25, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 5, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *Order Reversing Case, W.G.*, *supra* note 4.

<sup>12</sup> See *Order Reversing Case, R.L.*, *supra* note 4; see also *W.G.*, *supra* note 4.